

REMARKS

Claims 1, 3, and 5-33 are pending in the application. Claims 2 and 4 were previously canceled without prejudice. Claims 1, 9, 22, 23, 28 and 30 have been amended to further clarify Applicants' invention. Claims 1, 9, 22, 23, 28 and 30 are the independent claims.

The presented amendments in view of the following remarks are believed to be fully responsive to the Office Action mailed on June 4, 2007.

Claims 1, 3, and 5-31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,144,838 to Sheehan ("Sheehan") in view of U.S. Patent No. 6,151,581 to Kraftson ("Kraftson"). Claims 32 and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sheehan and Kraftson, and further in view of U.S. Patent No. 5,987,443 to Nichols et al. ("Nichols").

Additionally, claims 1, 3, and 5-31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sheehan in view of U.S. Patent No. 7,184,969 to Bonnstettner ("Bonnstettner"), and claims 32 and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sheehan and Bonnstettner, and further in view of Nichols.

As Applicants described during the personal interview earlier this year, and as is described in the Specification, the claimed invention can be used as a business management tool. Business and enterprises tend to have somewhat unique cultures and dynamics. Thus, a management tool used to evaluate performance of a business or enterprise needs to be based on an understanding of that businesses' particular dynamic. Moreover, each business or enterprises has a specific culture and dynamic, such that two or more businesses in a particular industry, such as mortgage banking, advertising or law, has a specific and unique culture in which individuals operate and perform their various tasks. As such, the claimed invention includes designing a **custom made** survey for an entity, the survey comprising a plurality of queries, and at least some of such queries being presented to the

entity regarding a given evaluatee. Responses to the queries are converted to numerical values from a discrete set of values. The converted responses are used to automatically generate individualized feedback items, where the feedback items are a defined set of linguistic expressions associated with the state of the plurality of the rules.

The feedback items are also custom made for the given entity as part of the survey design.

In the case of claim 30, the evaluatee is a team within the entity comprising at least two individuals.

In contrast, the cited art deals with (i) standardized tests – seeking to generate objective findings -- in educational contexts in the case of Sheehan; (ii) a patient management and health care database as in Kraftson; and a system for deciding which of set of predefined behaviorally related “competencies” are appropriate to a given job in Bonnstedtner. In no teaching of the cited art are each of the elements of the independent claims, as amended, taught.

As noted in prior papers filed in the present application, Sheehan discloses a system to evaluate performance on standardized tests. In Sheehan data is statistically analyzed to determine a probability of student success on subsequent similar standardized tests. Sheehan processes responses to standardized tests. Sheehan does not teach or suggest designing a survey for a given entity.

In the Office Action even the prior version of the following claim limitation was not shown as taught by Kraftson: “designing a custom made survey for an entity, said survey comprising a plurality of queries.” The amended version is certainly not taught or suggested in Kraftson. Kraftson’s survey is a one size fits all patient satisfaction survey. Kraftson’s system assumes all physician practices are similar enough to forego the granularity of a practice dependent survey. This may be a valid assumption for “patient satisfaction.” It is not a valid assumption for designing a management tool used to evaluate performance of a set of individuals within a team in a business or enterprise.

Moreover, it is not at all obvious to combine a survey of queries such as that of Kraftson with the test score analysis method of Sheehan. Thus, Applicants respectfully traverse the conclusion of the Office Action at the top of page 4. Kraftson is trying to gage consumer satisfaction with services rendered by physicians. Sheehan has no consumers. It deals with students taking standardized tests! Whose customer satisfaction would be gauged? The evaluatees in Sheehan offer no service to anyone. The evaluatees are the students taking the test. There are no customers! There is no such teaching at all in Sheehan, and Kraftson would not aid in improving the student skill evaluation system of Sheehan by adding third party satisfaction queries. Even if it would, it would not yield the presently claimed invention. Respectfully, the art is not analogous, and the evaluatee in Sheehan (test taking students) is not at all analogous to the evaluatee in Kraftson (physicians treating patients).

Bonnstettner is concerned with evaluating job applicants, although it can also be used to evaluate existing employees. Bonnstettner has a predefined set of “competencies” “applicable to most jobs.” Bonnstettner at 4:38-40. Then a subset of these competencies is selected for a particular job. Id. at 4:60-63. This is analogous to providing a suit off the rack and then tailoring it to the wearer. In contrast, the presently claimed invention measures specific measurements and identifies specific colors and styles, and then creates a custom made suit for each wearer. Bonnstettner (or Kraftson, for that matter) does not teach or suggest creating a custom made survey for an entity, as in the presently claimed invention. Its commercial model, which has this elaborate predefined set of general “competencies” which can be sold teaches away from it.

Moreover, it is not at all obvious to combine a survey of queries such as that of Bonnstettner with the test score analysis method of Sheehan. Thus, Applicants respectfully traverse the conclusion of the Office Action at the bottom of page 13. Bonnstettner is trying to gage aptitude for a job position. Sheehan tests academic skills and knowledge. It deals with students taking standardized

tests! Which job are these students applying for? The evaluatees in Sheehan perform no job. The evaluatees are the students taking the test. Respectfully, the art is not analogous, and the evaluatee in Sheehan (test taking students) is not at all analogous to the evaluatee in Bonnstettner (potential or existing employees). Because there is no job to do, it would not at all be obvious to display a series of questions in a survey to the students taking the standardized tests in Sheehan. It would not be useful at all to cull from a set of predefined “competencies” as in Bonnstettner to administer a test to a student for a specific “job” as there is no job and no potential employer! Whatever questions are on the test are all used. Not a subset based on experts identifying “the set of competencies defined for the specific job.” Sheehan in fact does the opposite. It administers a complete test to each applicant and analyzes different sets of responses as indicating different skills. It infers “competencies” based on objective findings.

Sheehan is not a management tool. It is a system for analyzing objective test results.

In addition to the patentability of independent claims 1, 9, 22, 23, 28 as argued above, claim 30, recites the additional feature that the evaluatee is a team within the entity comprising at least two individuals. This feature is not taught by any of the cited art, which focuses on evaluations of individuals.

Thus, each of the independent claims, as amended, recite designing a custom made survey for an entity, the survey comprising a plurality of queries, and at least some of such queries being presented to the entity regarding a given evaluatee, where the plurality of queries relate to the performance of a businessperson in a team setting. This feature is neither taught nor suggested by the cited art, whether alone or in combination.

Thus, Applicants respectfully submit that neither Sheehan, Kraftson, nor Bonnstettner, alone or in combination, teach or suggest all of the elements of the independent claims, as amended, for the foregoing reasons.

Thus, for similar reasons, the dependent claims are also urged as patentable over Sheehan, Kraftson and Bonnstettner, whether alone or in combination.

Nichols is directed to a goal based learning system that uses a rule based expert training system to provide a cognitive educational experience. The Office Action cites Nichols regarding feedback including links to auxiliary tools in connection with claim 32, and regarding that such tools are a method of conducting an evaluatee assessment in connection with claim 33. However, Nichols does not cure the deficiencies of Sheehan and Kraftson, or Sheehan and Bonnstettner as a reference against the independent claims, including claim 30, and thus claim 30, and similarly claims 32-33, are urged as patentable over Sheehan, Kraftson, Bonnstettner and Nichols, whether alone or in combination.

Thus, the claimed invention is submitted as being patentable over Sheehan, Kraftson, Nichols and Bonnstettner, whether alone or in combination.

CONCLUSION

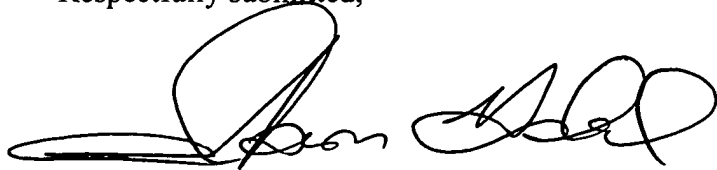
In view of the remarks herein, Applicants believe that each ground for rejection made in the instant application has been successfully overcome or obviated, and that all pending claims are now in condition for allowance. Withdrawal of the Examiner's rejections, and allowance of the current application are respectfully requested.

The Examiner is invited to telephone the undersigned in order to resolve any issues that might arise and to promote the efficient examination of the current application.

No additional fee is believed necessary for entry of this Amendment. However, the Commissioner is hereby authorized to charge any additional fee to Deposit Account No. 50-0540.

Dated: **December 4, 2007**

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Aaron S. Haleva', is written over a horizontal line.

Aaron S. Haleva
Reg. No. 44,733
KRAMER LEVIN NAFTALIS & FRANKEL LLP
1177 Ave. of the Americas
New York, New York 10036
Tel.: (212) 715-7773
Fax.: (212) 715-9397